



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

OPNAVINST 11170.2
N44 /689-99
17 Sep 99

OPNAV INSTRUCTION 11170.2

From: Chief of Naval Operations

Subj: NAVY RESPONSIBILITIES REGARDING UNDOCUMENTED HUMAN
BURIALS OR CEMETERIES

Ref: (a) Native American Graves Protection and Repatriation
Act, 25 U.S.C. 3001
(b) National Historic Preservation Act, as amended, 16
U.S.C. 470-47W-6
(c) Archeological Resources Protections Act of 1979, 16
U.S.C. 470AA-MM
(d) 36 CFR 60, "National Register of Historic Places"
(e) NAVFACENGCOM P-73, Chapter 9, "Relocation of
Cemeteries"

Encl: (1) Department of the Navy Policy Memo 98-08

1. Purpose. To provide guidance regarding the discovery and
handling of undocumented human burials or cemeteries.

2. Background

a. Enclosure (1) clarifies Department of the Navy policies,
procedures and responsibilities when undocumented human burials
or cemeteries are discovered while carrying out the military
mission. Cemeteries are cultural resources, and the discovery
of undocumented burial grounds and relocation of cemeteries
requires that special procedures be followed. Furthermore,
local laws may require notification of civil authorities upon
discovery of undocumented burial grounds.

b. Cemeteries are usually marked and separated from the
surrounding area by an enclosure, and documented by grave
markers and written records. In some instances, burial sites
are undocumented and may be unmarked and not readily obvious.
They may also house remains of Native Americans, settler
communities, or families.

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c. Identification and return of Native American, Native Alaskan, and Native Hawaiian remains and cultural objects are required by reference (a). This is not required for other populations.

3. Policy. All Navy-controlled burial sites will be treated with utmost respect and protected from the impacts of Federal actions. Cemeteries or graves may be relocated if the military mission requires use of the land and the requirements of references (a) through (c) are met. Local commands are authorized to make decisions regarding cemeteries and burial grounds in accordance with references (a) through (e).

4. Responsibilities. The following procedures shall be followed when planning any action that may require ground disturbance.

a. The Chief of Naval Operations (CNO (N44)) shall provide coordination with the Deputy Assistant Secretary of the Navy for Environment and Safety (DASN (E&S)), in accordance with enclosure (1).

b. Installation Management Claimants (IMC's) shall be familiar with enclosure (1) and references (a) through (e), ensure proper and timely execution of the policy described in enclosure (1), and forward reports of significant burial findings to CNO (N44).

c. Regional Commanders and/or Installation Commanding Officers shall:

(1) Consider the possibility of human burials or cemeteries when planning any ground disturbing action.

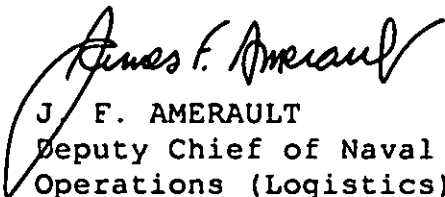
(2) Stop work immediately if a burial or cemetery is discovered. Notify Naval Criminal Investigative Service (NCIS) and a qualified cultural resources specialist either on the staff of the IMC or at the cognizant engineering field division.

(3) Ensure appropriate notification is given to the State Historic Preservation Officer and IMC.

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(4) Determine whether the burial is Native American, Native Alaskan or Native Hawaiian; and, if so, implement the procedures of reference (a). If the burial is not Native American, Native Alaskan or Native Hawaiian, consult with interested parties regarding identification, cultural or historic significance, eligibility determination for National Register of Historic Places documentation, and documentation of compliance with reference (c) and other applicable Federal, state, and local laws.

(5) Ensure compliance with the provisions of enclosure (1) whether burials are protected in place or are relocated.


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Operations (Logistics)

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DEPARTMENT OF THE NAVY
THE ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

MEMORANDUM FOR CHIEF OF NAVAL OPERATIONS (N4)
COMMANDANT OF THE MARINE CORPS (LF)

OPNAVINST 11170.2
20 Aug 98

Subj: DEPARTMENT OF THE NAVY POLICY MEMORANDUM # 98-08

Ref: (a) National Historic Preservation Act, as amended,
16 U.S.C. 470-470w-6
(b) Archeological Resources Protection Act of 1979,
16 U.S.C. 470aa-mm
(c) Native American Graves Protection and Repatriation
Act, 25 U.S.C. 3001
(d) 36 CFR 60, "National Register of Historic Places"
(e) NAVFACENGCOM P-73, Chapter 9, "Relocation of
Cemeteries"

1. Purpose. To clarify Department of the Navy (DON) policy, procedures and responsibilities when undocumented human burials or cemeteries are discovered while carrying out the military mission.

2. Background

a. References (a) through (c) require Federal agencies to protect cultural resources within their jurisdiction. A cemetery is a cultural resource, although cemeteries and graves are not ordinarily eligible for the National Register of Historic Places, with limited exceptions listed in section 4 of reference (d). Reference (e) provides policies and procedures to be followed in relocation of cemeteries and burial grounds as made necessary by DON projects. In addition, local laws may require that installation commanders notify civil authorities about the discovery of undocumented human remains so that any possibility of criminal activity may be investigated.

b. A cemetery is usually marked and separated from the surrounding area by some type of enclosure. Cemeteries are usually documented by grave markers and by written records held by public agencies, private archives (including those of religious institutions), or living descendants. However, in some cases human burial sites are undocumented. Such undocumented burials may be isolated or clustered, marked or unmarked, fenced or with no apparent enclosure. They may house human remains from previous Native American occupation, settler communities, or individual families.

Enclosure (1)

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c. Reference (c), and its implementing regulations, provides for the identification and return of Native American, Native Alaskan, and Native Hawaiian remains and associated cultural objects. This statutory requirement does not extend to other population categories.

3. Policy. It is DON policy to respect all burial sites under DON control, to protect them from the impacts of Federal actions, and to comply with all applicable laws. Preservation in place may not be required, and cemeteries or graves may be relocated if the land is required to accomplish the military mission if the requirements of references (a) through (c) are met. Local commands are authorized to make decisions regarding cemeteries and burials located on their lands in accordance with references (a) through (e).

4. Procedures. The possibility of undocumented burials should be considered in all planning for military actions that may require ground disturbance. However, if a burial or cemetery is unexpectedly discovered after the action is underway, then certain timely, respectful, and procedurally correct follow-up actions are required.

a. Stop work in the immediate area of discovery.

b. Simultaneously notify Naval Criminal Investigative Services (NCIS) and the cognizant DON cultural resources specialist. The DON specialist shall ensure that appropriate notification is given to the State Historic Preservation Officer and report significant burial finds to the Office of the Assistant Secretary of the Navy for Installations and Environment (DASN-ES), through the appropriate chain of command.

c. Determine whether or not the burial is Native American, Native Alaskan or Native Hawaiian; if so, follow specific procedures to implement reference (c).

d. If the burial is not Native American, consult with interested parties regarding:

(1) identification;

(2) cultural or historic significance;

(3) eligibility determination for National Register of Historic Places documentation; and

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(4) treatment options

e. Issues for consideration when deciding whether to protect burials in place or relocate burials to an active cemetery include:

(1) land use compatibility between burial grounds and mission;

(2) public sentiment; and

(3) cost of relocation.

f. If a decision is made to protect burials/cemeteries in place, actions include:

(1) literature search, professional archeological survey, and spatial mapping of individual burials;

(2) identification of individual remains (if feasible);

(3) formal designation of land as dedicated burial site; and

(4) provision of access to the descendants.

g. If a decision is made to relocate burials/cemeteries, actions include:

(1) literature search, professional archeological survey, and spatial mapping of individual burials;

(2) physical recordation of existing burial/cemetery (photographs, marker rubbings, oral histories);

(3) consultation with the next of kin or descendants of previous land owners;

(4) acquisition of space for reburial;

(5) exhumation by qualified professional (in accordance with reference (b) and its implementing regulations) using protective health measures for burial excavations;

(6) reinterment by qualified professional;

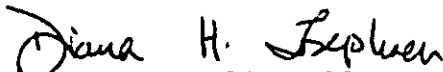
(7) spatial mapping of new burial sites; and

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(8) documentation of compliance with reference (b) and other applicable Federal, state, and local laws.

h. This policy memorandum does not create or confer any entitlement, enforceable right, property interest, standing to sue, or otherwise create any cause of action for any person, group, or interest party. In particular, an interested party has no enforceable right to "consultation" regarding any of the items or actions discussed in paragraph 4d of this memorandum.

5. Responsibilities. The Chief of Naval Operations and the Commandant of the Marine Corps shall issue implementing instructions as necessary within 120 days.


DIANA H. JOSEPHSON
Acting